

July 18, 2008

Maine Milk Commission Special Meeting Minutes
Deering Building, Room 233
Augusta, Maine 04333

Notices for the July 18, 2008 meeting were distributed to Commission members, intervenors and other interested parties June 23 and 24, 2008 and sent to the Secretary of State's Office for posting on June 23, 2008.

Commission Present: Chair, Michael Wiers, Colon Durrell, John Joseph Jr. and Tim Drake, *ex-officio*.

Commission Absent: Richard Cook

Department Officials: None

Staff Present: Stanley Millay, Executive Director, Audrey Shorty, Resource Administrator and Carol Gauthier, Office Associate.

Legal Counsel: Amy Mills

Intervenors Present: John Blake, H.P. Hood, Inc., Tom Brigham Oakhurst Dairy John Economy Garelick Farms of Maine and Julie-Marie Bickford Executive Director, Maine Dairy Industry Association (MDIA).

Others Present: Dale Cole and Fred Hardy from MDIA; Chuck Farrand, dairy farmer; Lisa Bragg from the University of Maine; and Ruby Hardy, and Mary Frank, public attendees.

Chairman Wiers called the meeting to order at 1.30 pm.

Agenda Item 1: Minutes: John Joseph made a motion to accept the minutes of the June 20, 2008 meeting. Colon Durrell seconded. Motion passed 3-0.

Agenda Item 2: Amy Mills, Assistant Attorney General: No report.

Agenda Item 3: Minimum Prices: Stan Millay reported that there is a prevailing premium of \$1.10/cwt on Class I for August 2008 reported by Dairy Marketing Services (DMS) and Agri-Mark Cooperative. In addition to this premium, both Agri-Mark and DMS reported that an additional \$0.43/cwt for milk that comes from producers who do not treat their cows with the rBST hormone will be in affect. Federal Order One Class I price for August is \$21.70. He explained that schedules were prepared using this information plus producer cost of production adjustments (COPA) of \$1.15/cwt., \$1.17/cwt., \$1.27/cwt. and \$1.38/cwt. He stated that these price schedules were for comparison purposes and that the Commission was not bound to them, and should make their pricing determination after hearing testimony. He went on to explain that the \$0.43/cwt. rBST free payment was a reduction from \$0.75/cwt. that has been prevailing for sometime. He said that handlers such as Agri-Mark Cooperative and DMS were still going to bill their customers at \$0.75/cwt. but offer a credit of \$0.32/cwt. He said that the idea was to move the rBST free payment back to \$0.75/cwt. at some point in the future when conditions permitted.

Dale Cole asked if anyone from Agri-Mark or DMS was going to attend this meeting to speak about this reduction in rBST free payments.

Stan Millay said he did not believe so.

Dale Cole went on to say that some producers had told him that they had received notice that they were going to be charged an additional \$0.19/cwt. as a transportation surcharge. He said this is on top of what they are paying already for transportation and will add to increasing their costs as will the reduction in rBST free payments. He said this hurts producers and wondered why the Commission did not request that representatives of these handlers come to the meeting to explain their rationale for cutting the rBST free payments.

John Joseph asked for further information about the transportation surcharge and rBST free payments.

Julie-Marie Bickford replied that customers, such as processor Dean Foods, were refusing to pay transportation surcharges and rBST free payments, thus creating a forced reduction. She said it appears that buyers are recovering their costs at the expense of producers.

Fred Hardy stated that it seems these costs are always passed on to the producers.

Dale Cole remarked that the recent Federal Order increase in the make allowance is another cost to producers. He said that producers were forced to give up using rBST and were given a payment to help with the cost of doing so. He went on to say that now part of that payment was being taken back, lowering payments to producers.

Colon Durrell wondered why the cooperatives would not stop delivery if their customers refused to pay.

Dale Cole stated that there is no competition.

Julie-Marie Bickford pointed out that the Commission could do something by increasing the COPA. She said that the multiple hits suffered by producers come at a critical time for them.

Dale Cole asked what would happen if the Commission continued adding the full \$0.75/cwt. rBST free adjustment to the Class I price.

Stan Millay replied that it would increase the cost to Maine processors in relation to out of state processors.

Colon Durrell said that he believed that increases of this sort encourage companies to shift buying milk from Maine processors to out of state processors like Cumberland Farms did recently.

Julie-Marie Bickford informed the Commission that she had purchased milk from Wal-Mart in Brunswick and was shocked at the price. She said she visited other stores in the area and found Shaw's and Hannaford still selling at the Maine Milk Commission minimum prices. She said that Wal-Mart had reverted from selling at the minimum price to retail mark-ups well above. She remarked that Wal-Mart apparently sees profit in dairy by taking from their customers compared to Hannaford and Shaw's.

John Blake asked who pays the COPA.

Stan Millay explained that the COPA was the basis used to calculate the amount payable to the Maine Milk Pool by Maine processors. He said out of state processors are not required to make payments into the milk pool.

Chairman Wiers asked if Cumberland Farms was continuing forward with their plan to switch buying milk from Maine processor Garelick Farms of Maine to an out of state processor.

John Economy responded that the move was initiated by Cumberland Farms and they did not seem to have encountered problems yet.

Julie-Marie Bickford wondered if there was any way that the Commission could influence Cumberland Farms to reverse their decision. She said it seemed there was not, so the Commission should not be bending over backwards lowering the COPA to try to change something that cannot be changed.

John Economy said that it was an economic decision by Cumberland Farms. He said that a higher COPA could encourage others to follow.

Dale Cole asked if it was not part of it that Cumberland Farms had a warehouse very near a Dean Foods processing plant in Massachusetts which makes it much more economically feasible for them to make the move.

John Joseph asked John Economy if his plant's volume was down because of the Cumberland Farms move.

John Economy replied yes.

John Joseph responded saying that this means less money to Maine producers.

Julie-Marie Bickford stated that cost recovery is everyone's goal. She said all suffer when one sector suffers. She said she was concerned with reactions to the Cumberland Farms move. She wondered if the Commission would lower the COPA. She said the Commission needed to strike a balance. She reminded the Commission that producers need to recover their costs as well.

Chairman Wiers stated that he understood the producers point but then said the Commission needs to be mindful of the whole dairy industry. He said that Cumberland Farms may be an example of what can happen if the Commission stretches too far. He said the problem is we may already be too far and anything the Commission does now will not bring it back.

Dale Cole told the Commission that there is only the Commission for them to talk to. He said part of the Commission's mission is to protect the milk supply in Maine. He said the Commission has choices. He said there is growth in the two milk processing plants in Portland and their volume is up. He urged the Commission to give as much as possible with the COPA.

Tom Brigham asked about the number of farms and production in Maine and whether they were stable.

Stan Millay referred to the production report in the handout packets. He said that production was up compared to 2007 and the number of farms unchanged for the past six months.

Dale Cole directed attention to the 2000 production numbers and pointed out that they were much higher than 2008.

Julie-Marie Bickford reminded the Commission that the Class I price for August was \$2.31/cwt lower than July, the rBST free payment was reduced, hauling charges were increased and cost in general were up for producers. She said anything the Commission could give would help.

Colon Durrell referred to Lisa Bragg's cost of production report in the handouts saying that it showed much higher cost for producers. He said he believed the Commission had put the COPA as high as it could. He made a motion to set the cost of production adjustment at \$1.23/cwt. and adopt schedule #08-08 that included a \$21.72/cwt. Class I Price as announced by Federal Northeast Milk Market Administrator, plus \$1.53/cwt. as prevailing in neighboring states, plus \$0.70/cwt. for a handling fee and plus a \$0.20/cwt. processor assessment, for a total dealer Class I cost of \$25.38/cwt. John Joseph seconded.

Julie-Marie Bickford reported that MDIA was working on changes to the Federal Order and invited processors and others to join them in helping make changes that would benefit the whole dairy industry.

Motion passed 3-0.

Agenda Item 4: Maine Monthly Price Survey: The Commission reviewed the Maine price survey for July 2008 which included prices for Augusta, Bangor and Presque Isle and the IAMCA price survey for May.

Stan Millay said that Wal-Mart Brewer had not dropped their retail prices as has most other major retail stores, making that store one with some of the highest retail milk prices in the state. He went on to say that the Augusta Wal-Mart was selling at the minimum but the Brunswick Wal-Mart which had been at the minimum in June had increased their prices well above in July.

Agenda Item 5: Next Scheduled Meetings:

- August 22, 2008, Friday 1:30 p.m.
Room 233, Department of Agriculture, Food & Rural Resources, Augusta ME
- September 19, 2008 Friday 1:30 p.m.
Room 233, Department of Agriculture, Food & Rural Resources, Augusta ME
- October 17, 2008 Friday 1:30 p.m.
Room 233, Department of Agriculture, Food & Rural Resources, Augusta ME
- November 21, 2008, Friday 1:30 p.m.
Room 233, Department of Agriculture, Food & Rural Resources, Augusta ME
- December 19, 2008, Friday 1:30 p.m.
Room 233, Department of Agriculture, Food & Rural Resources, Augusta ME

Agenda Item 6: Other:

1. **Milk Commission Budget:** The Commission reviewed the latest budget summary.
2. **Cost of Production Study:** Lisa Bragg offered an overview of where she is in this study and provided a handout that included some preliminary information.

3. **Milk Promotions:** The Commission received a copy of a milk promotion proposed by Kellogg's that will run in Target Stores in Maine. Secondly, an Oakhurst promotion that offered a combination price that included milk was discussed. Amy Mills reviewed historic information that she had provided to the Commission earlier by her memo dated April 14, 2008 concerning promotions. She said the question for the Commission is whether or not these types of promotions are consistent with the statute.

Colon Durrell said that he remembered reading about a 1980's court case where the Commission concluded that it was not feasible to determine costs of unregulated products. He said he believed that there was no way to determine if the price of milk was violated in many cases.

Amy Mills stated that even if there was a way to tell, there might still be an impression that there was a discount on milk being offered.

Stan Millay stated that in the case of the Oakhurst promotion, the price of milk did not seem to be affected because there was no discount on the milk, just on the cottage cheese that came in the combo purchase. He went on to say that it would be difficult to tell when a combination offer went too far. He said he believed the Commission could either say no to any brand specific combination or try to set criteria that would offer guidance for future promotions.

Fred Hardy said that the minimum price was established to protect everyone. Opening the door to some branded combination was dangerous and could lead to unintended economic disadvantages.

Colon Durrell made a motion that as a matter of policy, coupons or similar items of value that include brand specific milk be prohibited. John Joseph seconded. Motion passed 3-0.

4. **Dealer Cost and Accounting System:** Stan Millay reported that George Criner had proposed to come forth with a plan that would include a study of this issue and how it impacts the dealer cost of processing model. He said that Dr. Criner will work with Amy Mills to ensure that any plan forthcoming will dovetail with Milk Commission Statutes.
5. **Chapter 2 Hearing Procedure:** Stan Millay reported that he had discussed this rule with Amy Mills. He said they had determined that most of this rule was covered by other statutes. He said that he recommended it be repealed. Tim Drake made a motion to instruct staff to proceed with filing rulemaking to repeal Rule 2. Colon Durrell seconded. Stan Millay said that the public hearing would be held at the next meeting on August 22. Motion passed 3-0.
6. **Augusta and Presque Isle Wal-Mart and Stop & Shop Price Violations:** The Commission reviewed draft letters to both the Augusta and Presque Isle Wal-Marts in follow-up to their responses to minimum milk price violations that occurred in their stores. Colon Durrell made a motion to send the letters as presented. John Joseph seconded. Motion passed 3-0.

Stan Millay said that no response had yet been received from Stop & Shop in regards to their minimum milk price violation.

7. **Stan's Retirement.** Stan Millay reported that he will be retiring affective August 30, 2008. He said his last official Commission meeting will be August 22 and his last official day in the office will be August 25, 2008.

Julie-Marie Bickford provided a handout on a proposed new way to price milk that was prepared by Dan Smith and Paul Christ.

Agenda Item 7: Executive Session: The Commission did not go into Executive Session.

Adjourned: 3:40 p.m. (130 minutes).

Stanley Millay, Executive Director, Maine, Milk Commission.